



California Regulatory Notice Register

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APRIL 1, 2011

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODE

AMENDMENT

MULTICOUNTY: Freeport Regional Water Authority

A written comment period has been established commencing on **April 1, 2011** and closing on **May 16, 2011**. Written comments should be directed to the Fair Political Practices Commission, Attention Alexandra Castillo, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **May 16, 2011**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respec-

tive agency. Requests for copies from the Commission should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF THE LAW

NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF THE LAW

NOTICE IS HEREBY GIVEN that the **University of California Hastings College of the Law**, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its Conflict-of-Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The University of California Hastings College of the Law proposes to amend its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

This amendment to **the conflict of interest code includes revised titles of existing positions and deletion of titles of positions that have been abolished and revisions to the disclosure categories** and makes other technical changes to reflect the current organizational structure of the Department. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than May 16, 2011, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than May 1, 2011, by contacting the Contact Person set forth below.

The University of California Hastings College of the Law has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amend-

ments are based may be obtained by contacting the Contact Person set forth below.

The University of California Hastings College of the Law has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, the University of California Hastings College of the Law must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Elise Traynum
General Counsel
University of California
Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102
p. 415-565-4487
f. 415-565-4825

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Notice of Proposed Rulemaking

The Department of Food and Agriculture amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid Interior Quarantine as an emergency action which was effective on December 30, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than June 28, 2011.

This notice is being provided to be in compliance with Government Code Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on May 16, 2011. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Stephen Brown
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
sbrown@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321). Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be

used to eradicate said pest (Food and Agricultural Code Section 5761).

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

AMENDED TEXT

This emergency action expanded the quarantine area for ACP by approximately 3,625 square miles; including approximately 312 square miles of Santa Barbara; approximately 1,834 square miles of Ventura County; approximately 700 square miles of San Bernardino County; and, approximately 1,779 square miles of Riverside County. The entire counties of Imperial, Los Angeles and Orange; and, portions of Riverside, San Bernardino and San Diego are already under quarantine for ACP. The total proposed quarantine area would then become approximately 20,562 square miles. The effect of the amendment of this regulation is to provide authority for the State to perform quarantine activities against ACP within this additional area and existing regulated areas.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: A representative person or business could incur costs of approximately \$1,160 to \$3,320 per year in reasonable compliance with the proposed action.

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the proposed regulations may affect small business.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

AUTHORITY

The Department proposes to amend Section 3434 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Susan McCarthy at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Web site (www.cdfa.ca.gov/phpps/Regulations.html).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and

strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Notice of Proposed Rulemaking

The Department of Food and Agriculture intends to repeal Section 3286 of the regulations in Title 3 of the California Code of Regulations pertaining to Tomato Yellow Leaf Curl Virus Exterior Quarantine.

This notice is being provided to be in compliance with Government Code Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on May 16, 2011. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Stephen Brown
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
916.654.1017
916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hear-

ing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321). Existing law also provides that the Secretary may establish, maintain and enforce quarantine, and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407, 5301, 5302 and 5322).

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

REPEALED TEXT

This proposed action will repeal the Tomato Yellow Leaf Curl Virus Exterior Quarantine, Section 3286. The effect of the repeal of this regulation is to remove authority for the State to prohibit the entry of tomato plants from Florida under this regulation.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.
Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;

- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the proposed regulations may affect small business.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

AUTHORITY

The Department proposes to amend Section 3286 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Lindsay Rains at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Web site (www.cdfa.ca.gov/phpps/Regulations.html).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed

actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Notice of Proposed Rulemaking

The Department of Food and Agriculture proposes to amend subsection 3658 of the regulations in Title 3 of the California Code of Regulations pertaining to Plants (Pierce's Disease Control Program).

This notice is being provided to be in compliance with Government Code Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on May 16, 2011. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Stephen Brown
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
sbrown@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations, as he deems necessary, to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code Section 5322). Sections 6045 through 6047 (Food and Agricultural Code) establish that *Xylella fastidiosa*, Pierce's disease, and its vectors present a clear and present danger to California's agricultural industry; establish a Pierce's Disease Control Program and Management Account with program funding appropriations; and establish authority for regulations to effectuate the intent of these statutes.

The proposed amendment of Section 3658 will add 50 new hosts: *Acer* spp. (Japanese maple), *Aeonium* spp. (Aeonium), *Alstroemeria* spp. (Peruvian lily), *Aralia* spp. (Japanese aralia), *Aucuba* spp. (gold dust plant), *Brugmansia* spp. (angel's trumpet-tree), *Buddleja* spp. (butterfly bush), *Carissa* spp. (natal plum), *Cedrus* spp. (deodar cedar), *Chamaedorea* spp. (palms), *Chilopsis* spp. (desert willow), *Clematis* spp. (evergreen clematis), *Coleus* spp. (Coleus), *Coreopsis* spp. (Coreopsis), *Crataegus* spp. (thornless hawthorn), *Cuphea* spp. (Cuphea), *Dalbergia* spp. (Indian rosewood), *Datura* spp. (jimsonweed), *Distictis* spp. (blood trumpet), *Dracaena* spp. (Dracaena), *Duranta* spp. (golden dewdrop), *Fatsia* spp. (Japanese fatsia), *Geranium* spp. (cranesbill), *Gerbera* spp. (Transvaal daisy), *Gleditsia* spp. (honey locust), *Hydrangea* spp. (Hydrangea), *Ipomoea* spp. (morning glory), *Juniperus* spp. (Juniper), *Lavatera* spp. (mallow), *Lepidospartum* spp. (scalebroom), *Leptospermum* spp. (Leptospermum), *Leucodendron* spp. (Leucodendron), *Leucophyllum* spp. (Texas Ranger), *Liriope* spp. (giant turf lily), *Luma* spp.

(Luma), *Mahonia* spp. (Oregon grape), *Monstera* spp. (Monstera), *Musa* spp. (banana), *Parkinsonia* spp. (Mexican Palo Verde), *Pereskia* spp. (Barbados gooseberry), *Plectranthus* spp. (Plectranthus), *Prosopis* spp. (mesquite), *Ruellia* spp. (Mexican bluebells), *Salvia* spp. (sage), *Sedum* spp. (Sedum), *Sophora* spp. (sun king sophora), *Tecoma* spp. (Yellowbells), *Vitex* spp. (chaste tree), *Zelkova* spp. (Sawleaf zelkova) and *Ziziphus* spp. (jujube). The effect of this proposed amendment is to provide authority for the State to specifically regulate the movement of these hosts.

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: The Department of Food and Agriculture has determined that Section 3658 does not impose a new mandate on local agencies or school districts. This is an ongoing program authorized by the Legislature to combat Pierce's disease and its vectors with existing funding derived from the Pierce's Disease Management Account. The Legislature authorized these funds to be allocated to those local public entities that develop Pierce's disease work plans that conform to statutory standards and are approved by the Department of Food and Agriculture.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Department has made an initial determination that the proposed action is for an existing ongoing program which may have an adverse impact on some California businesses, including the ability of California businesses to compete with businesses in other states. These impacts would not be statewide and may only affect some of those businesses located within the glassy-winged sharpshooter (GWSS) infested areas. The economic impact on those California businesses is not expected to be significantly adverse when balanced against the protection provided to those busi-

nesses from costs or losses due to Pierce's disease or GWSS.

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the proposed regulations may affect small business.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

AUTHORITY

The Department proposes to amend Section 3658 pursuant to the authority vested by Sections 407 and 6047 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 6045 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Lindsay Rains McCarthy at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Web site (www.cdfa.ca.gov/phpps/Regulations.html).

**AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS**

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

**TITLE 4. CALIFORNIA HORSE
RACING BOARD**

**NOTICE OF PROPOSAL TO AMEND
RULE 1844. AUTHORIZED MEDICATION**

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1844, Authorized Medication. The proposed amendment would change the allowable levels of phenylbutazone in an official test sample from 5 micrograms to 2 micrograms of the drug substance per milliliter of blood plasma or serum. It further will change the allowable levels of flunixin in the official test sample from 50 nanograms to 20 nanograms per milliliter of blood plasma or serum.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, May 26, 2011**, or as soon after that as business before the Board will permit, at **Golden Gate Fields, 1100 Eastshore Highway, Albany, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action

described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on May 16, 2011**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Rebecca Salazar
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 274-6049
Fax (916) 263-6022
E-Mail: rlsalazar@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440 and 19562, Business and Professions Code.

Reference: Sections 19580 and 19581, Business and Professions Code.

Business and Professions Code section 19440 and 19562 authorizes the Board to adopt the proposed regulations which would implement, interpret, or make specific sections 19580 and 19581, Business and Professions Code.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this State. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in the State. Business and Professions Code section 19581 provides that no substance of any kind shall be administered by any

means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof.

The Board proposes to amend Rule 1844, Authorized Medication. The proposed amendment would change the allowable levels of phenylbutazone in an official test sample from 5 micrograms to 2 micrograms of the drug substance per milliliter of blood plasma or serum. It further will change the allowable levels of flunixin in an official test sample from 50 nanograms to 20 nanograms per milliliter of blood plasma or serum.

Phenylbutazone and flunixin are nonsteroidal anti-inflammatory drugs (NSAID) used for horses to target inflamed tissue and alleviate pain. The racing industry has reviewed and discussed extensively the effect of phenylbutazone and flunixin, because of the concern that higher permissive non-steroidal anti-inflammatory (NSAID) policies are compromising the examining veterinarian's ability to identify horses at risk for catastrophic injury. The concerns are the NSAIDS levels at the time of the pre-race examination mask the clinical signs of inflammation and pain, thus compromising the pre-race examination, which in turn, places the horse and rider at risk.

The CHRB conducts a postmortem examination of every horse that suffers a fatal injury on the racetrack under the jurisdiction of the Board. Over time these postmortems have shown a large majority of horses suffering fatal musculoskeletal racing fatalities have pre-existing pathology at the site of the fatal injury. This affects both horse and rider, as many of the jockey's injuries/fatalities occur when a horse sustains one of these fatal musculoskeletal injuries. The current permitted levels of phenylbutazone and flunixin may be a contributing factor to these racing fatalities due to the potential masking effect of phenylbutazone and flunixin.

Therefore it is necessary to amend Rule 1844 to lower the allowable levels of phenylbutazone and flunixin in an official test sample. This will assist the examining veterinarians by reducing the potential of these permitted NSAIDS to mask the true condition of the horse.

The CHRB 2009–2010 Annual Report indicated 220 horses died while in training or racing with the most common cause of fatality due to musculoskeletal injuries. The Annual Report states that the J.D. Wheat Equine Orthopedic Research Laboratory at the School of Veterinary Medicine at UC Davis is studying these injuries and the role of undiagnosed stress fractures that may be contributing to catastrophic fatalities.

A press release from the Racing Commissioners International (RCI), on October 22, 2010, states that RCI voted to lower the threshold levels for phenylbutazone. The RCI action changed the phenylbutazone levels from 5 micrograms per milliliter of plasma or serum to 2

micrograms. The RCI promulgates model regulations that are used by the various racing jurisdictions as guidelines when writing or amending their own regulations. The proposed amendments to Board Rule 1844 will bring the CHRB's allowable level of phenylbutazone and flunixin in line with the RCI Model Rule 011–020 Medications and Prohibited Substances; section (E) Non-Steroidal Anti-Inflammatory Drugs (NSAIDS).

As of January 1, 2012, the American Graded Stakes Committee will require races to be run under a 2 milliliter threshold for phenylbutazone to maintain their graded stakes eligibility. Graded stakes have a significant impact in the prestige of a race and the subsequent value of graded stakes winners. The proposed amendment to Rule 1844 will bring California's allowable level of phenylbutazone into line with the American Graded Stakes Committee requirements.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school district: none.

Cost or savings to any State agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1844 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1844 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1844 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine

that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Rebecca Salazar, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6049
E-mail: rlsalazar@chrb.ca.gov

If the person above is not available interested parties may contact:

Harold Coburn, Regulation Analyst
Telephone: (916) 263-6397
E-mail: HaroldC@chrb.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Rebecca Salazar, or the alternate contact person at the address, phone number, or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made

available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Rebecca Salazar at the address above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Rebecca Salazar at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its website. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.

TITLE 4. CALIFORNIA HORSE RACING BOARD

NOTICE OF PROPOSAL TO ADD RULE 1500.1. RANDOM DRUG TESTING AND TO AMEND RULE 1498. PHYSICAL EXAMINATION

The California Horse Racing Board (Board) proposes to add the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1500.1, Random Drug Testing. The proposed regulation states that jockeys, apprentice jockeys and drivers are subject to random drug testing as well as testing for cause and that failure to submit to or to complete a drug test constitutes a refusal to be tested. Jockeys, apprentice jockeys or drivers who refuse a drug test shall immediately be prohibited from riding or driving in any race at a racetrack under the jurisdiction of the Board until a negative test result is achieved. The proposed regulation states random drug testing will be conducted on an unannounced basis, before or after the performance of duties. Persons

to be tested will be chosen from among jockeys, apprentice jockeys or drivers whose names appear on the official program the day random drug tests are conducted. The frequency of random drug testing will depend on the duration of the race meeting. For race meeting of up to five months, random drug testing shall occur at least once during the meeting. If a race meeting lasts six months or more, random drug testing shall occur at least twice during the meet. For the purpose of the regulation, the Northern California Fair circuit shall be considered one race meeting. The proposed regulation provides for a split sample program, and a method of informing the jockey, apprentice jockey or driver if a positive finding of a prohibited drug is reported. The jockey, apprentice jockey or driver will have the option of requesting the testing of the split sample provided he or she pays for the transporting and testing of the split. The proposed amendment to Rule 1498, Physical Examination, provides that the annual jockey/driver physical examination shall include a drug test to screen for substances as described in Rule 1500.1.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, May 26, 2011**, or as soon after that as business before the Board will permit, at the **Golden Gate Fields Race Track, 1100 Eastshore Highway, Albany, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on May 16, 2011**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6022
E-Mail: haroldc@chrb.ca.gov

AUTHORITY AND REFERENCE

Rule 1498:

Authority cited: Sections 19420, 19440 and 19520, Business and Professions Code.

Reference cited: Sections 19440, 19520 and 19521, Business and Professions Code.

Rule 1500.1:

Authority cited: Sections 19420, 19440 and 19520, Business and Professions Code.

Reference cited: Sections 19440, 19520 and 19521, Business and Professions Code.

Business and Professions Code sections 19420, 19440 and 19520 authorize the Board to adopt the proposed regulations, which would implement, interpret or make specific sections 19440, 19520 and 19521, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19520 states every person not required to be licensed under Article 4 (commencing with section 19480) who participates in, or has anything to do with, the racing of horses shall be licensed by the board pursuant to rules and regulations that the board may adopt. Business and Professions Code section 19521 provides that an original license issued pursuant to this article shall be issued for a period of the calendar year in which it is issued, and shall be renewable for a period, not to exceed three years, which the Board may, by regulation establish. The license shall be valid at all horse racing meetings in this state during the period for which it is issued, unless it is suspended or revoked prior to the expiration of the period.

The Board proposes to add Rule 1500.1 to provide that jockeys, apprentice jockeys and drivers are subject to random drug testing, as well as testing based upon reasonable suspicion. The Board currently requires jockeys, apprentice jockeys and drivers to submit to drug testing for cause — if the facts or circumstances are sufficient to believe a jockey, apprentice jockey or

driver is involved with illegal drug substances that may affect his or her performance in a race. The average jockey weighs between 108 and 118 pounds, and he or she must be able to control a horse that may weigh between 1,000 and 1,200 pounds and that runs at speeds between 36 and 38 miles an hour (for thoroughbreds). Harness drivers must have upper body physical strength and the ability and skill to maneuver the horse and sulky in a race. Under such circumstances it is imperative that the rider/driver is not impaired in any way. The Board has determined that a program of random drug testing will help to reduce or eliminate the potential for a jockey, apprentice jockey or driver to participate in a race meeting while using illicit drugs.

Subsection 1500.1(a) provides that jockeys, apprentice jockeys and drivers are subject to random drug testing, and that failure to submit to or to complete a drug test at the time, location and manner directed by the Board or its representatives shall constitute a refusal to be tested. Failure to submit to or to complete a drug test shall result in the jockey, apprentice jockey or driver being immediately prohibited from participating in a race until a negative test result is achieved. This provision is designed to ensure that the jockey/driver submits to the drug test, as directed. The consequence of not submitting to a test is the inability to ride/drive in a race, which equates to a potential loss of income.

Subsection 1500.1(a)(1) states that random drug testing shall be conducted at the direction of the Executive Director on an unannounced basis before or after the performance of duties. This means the decision to conduct random drug testing will not rest with anyone who works at the racetrack. This will help to ensure that a jockey, apprentice jockey or driver will not be forewarned of the drug test. Board Rule 1680, Jockeys and Drivers to Report, requires every jockey or driver engaged to ride in a race to report to the Jockey/Driver Room at least one hour before post time of the first race. After reporting, a jockey or driver shall not leave the Jockey/Driver Room except to ride in a race, until all his or her engagements of the day have been fulfilled. This means the jockey/driver will be readily available to be notified of a drug test, and to provide a test sample before or after the performance of his or her duties. In addition, Board Rule 1926, Entrance to Jockey Room Prohibited, restricts entrance to the jockey room or driver room to only those who have a reason to interact with the jockeys/drivers. This will limit the possibility of anyone interfering with the testing process. To select those who will be subject to a drug test, the names of all jockeys, apprentice jockeys or drivers who appear on the official program the day random drug testing is conducted shall be placed in a secured container which shall be in the custody of the supervising investigator who before the first race shall draw not more than nine

names. The supervising investigator is given custody of the container and has the task of drawing names for random drug testing, as he or she operates under the direction of the Executive Director. Furthermore, the Board's enforcement arm is the logical entity to ensure the integrity of the process. The Board set the number of names to be drawn at nine, as there is an average of 8.6 races on a card. This allows for the possibility of at least one jockey/driver from each race being selected for random drug testing.

Subsection 1500.1(a)(2) states that a representative of the Jockey's Guild (Guild) or the California Harness Horsemen's Association (CHHA) may attend and witness the random selection of names. The presence of a Guild or CHHA representative will serve to ensure the interests of the jockeys or drivers are represented, and that there are no questions regarding the conduct of the supervising investigator when the names are drawn for random drug testing.

California race meetings may last from one week — in the case of racing fairs — to twelve months — in the case of the quarter horse meeting at Los Alamitos and the harness meeting at Cal-Expo. In addition, many thoroughbred jockeys ride at multiple meetings throughout California. The Board has determined that at least one random drug test shall occur at a race meeting. However, that would mean that jockeys who participate in longer meetings, such as the quarter horse meeting at Los Alamitos, or drivers who ride at Cal-Expo, would be subject to testing a minimum of one time over twelve months, while a thoroughbred jockey who participates in the Southern California thoroughbred racing circuit for a year would be subject to testing at any of the five race meetings. There are five Southern California thoroughbred meetings lasting from a little over three months to one month. On the other hand, a jockey who rides in the Northern California fair circuit, where a meeting may last only one week, would be subject to testing on a weekly basis. To address this issue, subsections 1500.1(a)(3) and 1500.1(a)(4) state how often random drug testing will occur in the course of a race meeting. The Board determined random drug testing shall occur at least once during race meetings lasting up to five months, and it shall occur at least twice for race meeting of six or more months. In addition, subsection 1500.1(a)(3) provides that the California Fair Circuit shall be considered one meeting. This will prevent the weekly random testing of jockeys who participate in the fair circuit, but guarantees that at least once during the five month period such jockeys may be tested. Because names are randomly drawn for testing, it is possible that a jockey or driver may be selected more than once during a race meeting. Subsection 1500.1(a)(1) provides that if a jockey or driver's name is selected more than once it shall be eliminated and another selection made.

The Board has determined that given the short duration of most race meetings, it has a greater interest in testing a larger number of jockeys/drivers than in testing some jockeys/drivers multiple times.

To provide for a split sample, subsection 1500.1(b) states that each urine specimen shall be divided into two separate parts. One part is the official jockey/driver test sample, and shall be tested by a Board approved official laboratory. The remaining portion is the jockey/driver split sample, which will be available for testing at a Board approved independent laboratory upon the request of the individual who provided the specimen. The purpose of the split sample is to allow the jockey, apprentice jockey or driver the opportunity to have the specimen retested at a different laboratory.

Subsection 1500.1(b)(1) provides a definition of "Board approved laboratory" and "Board approved independent laboratory." These are laboratories that are certified by the United States Department of Health and Human Services under the National Laboratory Certification Program as meeting the minimum standards to engage in urine drug testing for federal agencies. This provides a standard that ensures the laboratories adhere to strict federal guidelines. The list of qualified laboratories is updated monthly on the federal register. Laboratories that do not continue to meet the federal criteria are dropped.

Subsection 1500.1(b)(2) lists the prohibited drugs or classes of drugs that each urine specimen will be tested for. The drugs or classes of drugs are: marijuana metabolites; cocaine metabolites; amphetamines; opiate metabolites; and phencyclidine (PCP). These are the classes of prohibited drugs for which the United States Department of Transportation (DOT) tests. A Guild representative and staff met in January 2011 to discuss the proposed regulation. At that time the parties agreed to the Guild's recommendation to use the DOT list of prohibited drugs.

Subsection 1500.1(c) provides that the Board approved official laboratory shall immediately and confidentially report to the Executive Director or his designee any positive findings for any of the prohibited drugs. The Board approved laboratory shall also transmit a confidential written report of the findings to the Executive Director within five working days after the notification is made. Subsection 1500.1(d) sets forth the procedure to be followed in notifying a jockey, apprentice jockey or driver of a positive finding. The Executive Director or his designee shall notify the supervising investigator, who shall confidentially notify the jockey or driver. The Board wishes to be able to notify a jockey or driver of a positive finding as quickly as possible, so that jockey or driver can be prevented from participating in any races. This is why the laboratory notifies the Executive Director prior to issuing a written report.

Timely notification also allows the jockey or driver to request testing of the jockey/driver split, so the process can be expeditiously moved forward. The results of the drug test and the split sample test are confidential and will remain confidential unless or until the Board files an official complaint or accusation.

Under subsection 1500.1(d)(1), a report of a positive test will result in the jockey, apprentice jockey or driver being immediately prohibited from riding/driving in any race at a facility under the jurisdiction of the Board. This is a necessary precaution to ensure the jockey/driver is not participating in any race while impaired. This provision was supported by the Guild representative and the CHHA.

Subsection 1500.1(d)(2) states the jockey, apprentice jockey or driver shall have 72 hours from the date he or she is notified to request that the split sample be tested by a Board approved independent laboratory. The 72 hour limit is consistent with federal regulations, and allows for a three-day window in which the jockey may make his or her decision. This is necessary to inform the jockey/driver of the timeline in which they may act to refute the official test results.

Subsections 1500.1(e)(1) through 1500.1(e)(3) provide the steps necessary for a jockey, apprentice jockey or driver to request testing of the jockey/driver split sample, and the consequences of failing to request testing of the jockey/driver split sample in a timely manner. To request testing of the jockey/driver split sample, the jockey, apprentice jockey or driver must complete the form CHRB-217 (New 3/11) Request to Release Jockey/Driver Split Sample. The form notifies the Board that the jockey/driver wishes to have the split tested. The form also names the Board approved independent laboratory at which the jockey/driver wishes the split to be tested, and certifies that he or she has made arrangements to pay the costs of shipping and testing the split. In completing the form, the jockey/driver acknowledges that if he or she does not make such payment, the split will not be released, and any hearing will be based on the original confirmation report from the board approved official laboratory. This keeps the jockey/driver informed of the actions he or she must take to ensure testing of the split, and it provides the Board with documentation of the request to test the split sample, and that the jockey/driver understands the consequences of not following through.

Subsection 1500.1(f) provides that upon receipt of a valid form CHRB-217, the form CHRB-217A (New 3/11) Authorization to Release Jockey/Driver Split Sample Evidence, shall be completed and the jockey/driver split sample shall be sent to the designated Board approved independent laboratory for testing. This form provides the CHRB with a paper trail that verifies the date the Board approved official laboratory was noti-

fied to release the jockey/driver split sample for testing at a Board approved independent laboratory.

Subsection 1500.1(f)(1) provides that if the Board approved independent laboratory fails to confirm the findings of a prohibited drug as reported by the Board approved official laboratory, it shall be presumed that a prohibited drug was not present in the official jockey/driver test sample. The Board carries the burden of proof, and in disciplining a licensee this requires accuracy of the evidence. If the split sample does not confirm the presence of a prohibited drug substance, Rule 1500.1 gives the licensee the benefit of the assumption that there is no evidence to support the findings of the Board approved official laboratory.

Subsection 1500.1(g) provides that if a jockey, apprentice jockey or driver fails to request testing of the jockey/driver split sample, he or she shall be deemed to have waived his or her right to have the sample tested. This lets the jockey/driver know the consequences of failure to act. Rule 1500.1 allows for the opportunity to refute the findings of the Board approved official laboratory, and it provides for a three day period in which the jockey/driver may decide to have the split sample tested.

Subsection 1500.1(h) states that unless or until the Board files an official complaint or accusation, results of the official jockey/driver test sample and the jockey/driver split sample shall be, and shall remain confidential. The release of a test result must be explicitly required under Rule 1500.1, and only specified individuals shall receive results. It is necessary to exercise confidentiality to allow the Board the opportunity to determine what it will do regarding the test results, and to maintain the licensee's fundamental right to privacy.

Subsection 1500.1(i) provides that the Board may take into consideration the possession of a valid and current Medical Marijuana Program Identification Card issued in accordance with the California Department of Public Health in determining whether or not it will file an official complaint or accusation against a jockey or apprentice jockey who tests positive for marijuana metabolites. The Board does not condone a jockey or driver's use of marijuana; however, it recognizes that in 1996 Proposition 215 added California Health and Safety Code section 11362.5, to ensure that Californians have the right to obtain and use marijuana for medical purposes, and to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. Subsection 1500.1(i) provides some leeway for the jockey, apprentice jockey or driver who can demonstrate a valid medical reason for the presence in the test sample of the otherwise prohibited drug. At the

same time, subsection 1500.1(i) does not prohibit the Board from taking action.

Subsection 1500.1(j) of the proposed regulation reserves the right to direct a jockey, apprentice jockey or driver to submit to a drug test by methods including, but not limited to, blood, hair follicle or skin. This provides the Board with flexibility in testing methods should it determine it wishes to go beyond urine — especially when testing for cause.

The proposed amendment to Rule 1498 provides that the annual jockey/driver physical examination shall include a drug test to screen for substances as described in Rule 1500.1, subsections (b)(2)(A) through (b)(2)(E). This is the list of prohibited drugs the Board will test for under its random drug testing program. The proposed amendment to Rule 1498 also states that a positive finding for the drugs described in Rule 1500.1, subsections (b)(2)(A) through (b)(2)(E) shall result in the jockey/driver not being cleared to ride/drive until he or she passes the physical examination. This means the jockey/driver would be required to achieve a negative test result to be cleared to ride/drive in a race. Annual jockey physicals currently include drawing blood for a comprehensive blood panel — of the type one normally experiences during routine physical examinations. The race track physicians have indicated the additional work of drawing blood or taking urine to test for drug use would be considered minimal.

The proposed amendment to Rule 1498 would result in every jockey and apprentice jockey being tested for illicit drug use at least once a year.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: The proposed addition of Rule 1500.1 may cost the CHRB approximately \$3,132 per year.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed addition of Rule 1500.1 and the proposed amendment to Rule 1498 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would

necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed addition of Rule 1500.1 and the proposed amendment of Rule 1498 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to add Rule 1500.1 and the proposal to amend Rule 1498 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: haroldc@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Regulation Analyst
Telephone: (916) 263-6033
E-mail: andreao@chrb.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed texts, the modified texts, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **May 19, 2011**, at 10:00 a.m. in Room 310 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **May 19, 2011**, following the Public Meeting, in Room 310 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS

MEETING: On **May 19, 2011**, following the Public Hearing, in Room 310 of the County Administration Center, 1600 Pacific Highway, San Diego, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should

contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and the General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **May 19, 2011**.

1. **TITLE 8: CONSTRUCTION SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 4
Article 2, Section 1504
Article 12, Section 1600
Article 13, Sections 1602-1603.1
Work Over or Near Water

2. **TITLE 8: CONSTRUCTION SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 4,
Article 2
Section 1504
GENERAL INDUSTRY SAFETY ORDERS

Division 1, Chapter 4, Subchapter 7,
Article 1
Section 3207
Definition of Certified Safety Professional (CSP)

Descriptions of the proposed changes are as follows:

1. **TITLE 8: CONSTRUCTION SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 4
Article 2, Section 1504
Article 12, Section 1600
Article 13, Sections 1602–1603.1
Work Over or Near Water

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

During a recent update of pile driving standards, Board staff noted that 29 CFR 1926.603, Pile Driving Equipment, subsection (b) requires that barges or floats supporting pile driving operations meet the applicable requirements of 29 CFR 1926.605, Marine Operations and Equipment. Further investigation revealed that California standards for work over or near water (marine operations), including pile driving, were not as effective as federal standards found in 29 CFR 1926.605 and that California has jurisdiction over certain maritime operations covered by 29 CFR 1926.605.

The Board therefore proposes to adopt standards which are at least as effective as federal standards. The Board notes that California standards for work over water are contained primarily in CSO Article 13. As noted above, federal standards for pile driving contain a cross-reference to 29 CFR 1926.605 for marine operations; thus it is necessary to amend Article 12 to include a cross-reference to CSO Article 13 for work over or near water. Article 2, Definitions, is also proposed to be amended to include a definition relevant to these modifications.

This proposed rulemaking action contains nonsubstantive, editorial and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Article 2, Section 1504. Definitions.

New subsections 1603(h) and (i) contain provisions for Jacob's ladders. Since this type of ladder is not currently defined in the CSO, a definition for Jacob's ladders is proposed to be added to definitions applicable to all Construction Safety Orders. The effect of this amendment will be to clarify requirements of the CSO for work over or near water. Please, note that, for better organization of Section 1504, existing definitions of the various types of ladders have been reordered alphabetically.

Article 12, Section 1600. Pile Driving.

29 CFR 1926.603(b) prescribes that barges or floats supporting pile driving operations shall meet applicable

requirements of 29 CFR 1926.605 (Marine Operations and Equipment). During the recent update of California pile driving standards, it was discovered that Title 8, CSO Article 12, Pile Driving, the state counterpart of 29 CFR 1926.603, did not contain this requirement; however, the omission was determined to be outside the scope of that noticed rulemaking. It is therefore proposed to modify subsection 1600(k) to require that barges or floats supporting pile driving operations meet requirements of CSO Article 13 which contains, or is being amended to contain, provisions at least as effective as those contained in 29 CFR 1926.605. The effect of this modification will be to ensure that California standards for pile driving operations over or near water be conducted in a manner at least as effective as federal standards.

Article 13, Section 1602. Work Over or Near Water, Subsection (a), Safety Devices.

CSO Article 13 does not currently require that there be ladder access from the top of the apron to the surface of the water. This ladder is required for lifesaving purposes by 29 CFR 1926.605(d)(2). It is therefore proposed to add new subsection 1602(a)(4) to include this provision. The effect of this amendment will be to ensure that California standards for work over or near water will be at least as effective as federal standards.

Section 1602. Work Over or Near Water, new Subsection (b), First Aid.

Although General Industry Safety Orders (GISO) Section 3400, Medical Services and First Aid, is applicable to all work in general industry, federal 29 CFR 1926.605(d)(1) contains a specific requirement that maritime operations include procedures for rendering first aid and medical assistance. It is therefore proposed to include a cross-reference to Section 3400 in Section 1602 as subsection (b). The effect of this amendment will be to ensure that California standards for work over or near water are at least as effective as the federal provisions.

Section 1603. Walkways (renamed "Access to or from Wharves, Floats, Barges and/or Boats").

Section 1603 currently contains provisions for walkways on dredge discharge pipe lines. It also contains requirements for catwalks and platforms. Federal standard 29 CFR 1926.605(b) contains a broader listing of requirements for vehicular and personnel access to or from wharves, floats, barges and/or boats, including vehicle access ramps, gangways, and Jacob's ladders. It is proposed to rename Section 1603 as "Access to or from Wharves, Floats, Barges and/or Boats," and to add new subsections to address all subjects addressed by 29 CFR 1926.605(b). The effect of these amendments will be to ensure that California standards are at least as effective as the federal provisions.

New Section 1603.1. Working Surfaces of Barges.

29 CFR 1926.605(c) contains requirements that are specific for working surfaces of barges. The lack of California counterpart standards was discovered during a recent update of pile driving standards; however these provisions were deemed to be outside the announced scope of that rulemaking. It is therefore proposed to adopt these federal standards which include requirements for safe passage over or around deck loads and for fall protection when working on deck loads. The effect of this adoption will be to assure that California standards for work surfaces on barges are at least as effective as federal standards.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commenc-

ing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. **TITLE 8: CONSTRUCTION SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 4,
Article 2
Section 1504

GENERAL INDUSTRY SAFETY ORDERS

Division 1, Chapter 4, Subchapter 7,
Article 1
Section 3207

Definition of Certified Safety Professional (CSP)

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The proposed amendments are the result of the Occupational Safety and Health Standards Board (Board) decision regarding OSHSB Petition File No. 515 dated October 21, 2010, submitted by Mr. John McCullough, Assistant Vice President of Wells Fargo Insurance Services USA, Inc. The Petitioner requested the Board adopt a definition of the term “Certified Safety Professional” (CSP) and place it in Title 8. The Petitioner noted that while Certified Industrial Hygienist, Registered Engineer (Professional Engineer), and Certified Marine Chemist definitions are easily found in Title 8 and elsewhere in California Statutes, the term “Certified Safety Professional” and/or the acronym “CSP” are not. In the course of evaluating the Petitioner’s request, Board staff confirmed that the “CSP” acronym represents a number of certified professionals in disciplines other than occupational safety. The Board of Certified Safety Professionals (BCSP) is the only body authorized to bestow the “Certified Safety Professional” designation.

Board staff notes that Federal Occupational Safety and Health administration standards and the American National Standards Institute (ANSI Z590.2–2003, Criteria for establishing the Scope and Functions of the Professional Safety Position) refer to the designation “Certified Safety Professional”, but fail to define the term.

Section 1504. Definitions.

Existing Section 1504 defines a broad category of words and terms used throughout the Construction Safety Orders (CSO). The amendment adds the BCSP definition of “Certified Safety Professional” or “CSP”. The proposed amendment will ensure clarity and consistency throughout Title 8 in defining “Certified Safety Professional”.

Section 3207. Definitions.

Existing Section 3207 of the General Industry Safety Orders (GISO), defines terms for general use these or-

ders. An amendment is proposed to add to Section 3207 the BCSP definition of the term “Certified Safety Professional” or “CSP”. The amendment will clarify the meaning of a “Certified Safety Professional” or “CSP” and provide consistency with other credentialed professional designations already defined in Title 8.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. No adverse impact is anticipated as this proposal simply provides clarity and consistency in defining a term already used in Title 8.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new pro-

gram or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramen-

to, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than May 13, 2011. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on May 19, 2011, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board’s rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board’s notice and other materials associated with this proposal on the Standards Board’s homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board’s website or by calling the telephone number listed above.

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (hereafter “Board”) is proposing to add regulations described in the Informative Digest

below. Any person interested may present statements or arguments relevant to the action proposed at a hearing to be held at the State Capitol, Senate Room 113, at 10:30 a.m., on Thursday, May 19, 2011. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests, but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Board of Chiropractic Examiners at its office no later than 5:00 p.m. on Monday, May 16, 2011.

The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 1000–4(b) and 1000–10 of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii) and to implement, interpret or make specific Sections 1000–4(b), and 1000–10 of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii); the board is considering changes to Title 16, Division 4, of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Chiropractic Initiative Act Section 1000–4(b) authorizes the board to adopt regulations as they may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

This proposal would make regulatory changes to enhance protection of chiropractic consumers by establishing informed consent requirements in regulation. These changes would increase the Board’s enforcement authority and enhance consumer protection by requiring Doctors of Chiropractic licensed in California to inform their patients of any known risks of serious bodily harm prior to initiating clinical care.

The Board is proposing to make the following changes:

1. Add Section 319.1(a)

This proposal would add Section 319.1(a) to set forth informed consent requirements for chiropractic care which may result in material risks to the patient. This section would define the term “material” as a procedure inherently involving known risk of serious bodily harm. This section would further require chiropractors to obtain written informed consent prior to initiating clinical care and require the signed written consent to become part of the patient’s record.

2. Add Section 319.1(b)

This section would define a violation of this section as unprofessional conduct for which the licensee may be subject to disciplinary action.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Non–discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 through 17630 Requires Reimbursement: None.

Business Impact:

The Board initially determined that the proposed regulation would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impact on Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

This proposal will only affect licensees who do not currently obtain informed consent from patients whose treatment involves a known risk of serious bodily harm, who may incur minimal costs, if any, related to the creation of an informed consent form for use in their practice.

Effect on Housing Costs: None

Effect on Small Business:

The board has determined that this regulatory proposal will not impose a significant cost to small businesses.

This proposal will only affect licensees who do not currently obtain informed consent from patients whose treatment involves a known risk of serious bodily harm, who may incur minimal costs related to the creation of an informed consent form for use in their practice.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative that is considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has all the information available upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, the initial statement of reasons, and all the information upon which the proposal is based, may be obtained upon written request from:

Dixie Van Allen, Program Analyst
2525 Natomas Park Drive, Suite 260
Sacramento, California 95833
(916) 263-5329
Fax (916) 263-5369
dixie.vanallen@CHIRO.ca.gov

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the web site, www.chiro.ca.gov.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Dixie Van Allen, Program Analyst
Address: 2525 Natomas Park Drive, Suite 260
Sacramento, California 95833
Telephone: (916) 263-5329
Fax: (916) 263-5369
E-mail: dixie.vanallen@CHIRO.ca.gov

The backup contact person is:

Name: Robert Puleo, Executive Officer
Address: 2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833
Telephone: (916) 263-5355
Fax: (916) 263-5369
E-mail: chiro.info@chiro.ca.gov

Web Site Address: Materials regarding this proposal can be found at www.chiro.ca.gov.

TITLE 16. BOARD OF PSYCHOLOGY

NOTICE IS HEREBY GIVEN that the Board of Psychology (hereinafter "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Radisson Newport Beach, 4545 MacArthur Boulevard, Newport Beach, California, at 9:00 a.m., or as soon as practicable thereafter, on May 21, 2011. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on May 16, 2011, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2930 Business and Professions Code, and to implement, interpret or make specific Sections 2928, 2930, 2960.5, and 2965 Business and Professions Code, and Sections 11415.60 and 11500 of the Government Code, the Board is considering changes to Division 13.1 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Business and Professions Code section 2920.1 mandates that protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

This proposal would make specific regulatory changes to enhance the Board's mandate of consumer protection.

This proposal would delegate authority to the Executive Officer to approve settlement agreements for revocation, surrender, or interim suspension of a license or registration.

This proposal would delegate authority to the Executive Officer to order an applicant for licensure to submit to a physical or mental examination if it appears that the applicant may be unable to safely perform the duties and functions of a psychologist, psychological assistant or registered psychologist due to physical or mental illness affecting competency. Additionally, if after receiving the evaluation report the Board determines that the applicant is unable to practice safely, the Board may deny the application.

This proposal would amend the title of Article 7 of Division 13.1 from Restoration of Suspended or Revoked Licenses, to Standards Related to Denial, Discipline, and Reinstatement of Licenses and Registrations to provide clarification of the subject matter of the regulations contained within Article 7.

This proposal would, in addition to conduct described in Business and Professions Code Section 2960, further define "unprofessional conduct" to also prohibit the inclusion of provisions in agreements to settle civil disputes that would forbid another party to the dispute from contacting, cooperating with, or filing a complaint with the Board, or that would require another party to the dispute to attempt to withdraw a complaint the party has filed with the Board.

The definition of "Unprofessional Conduct" would also include failure of the licensee or registrant to provide lawfully requested documents; failure to cooperate with an investigation pending against a licensee or registrant; failure to report an indictment, charging a felony, arrest, conviction of the licensee or registrant; failure to report any disciplinary action taken by another licensing entity or authority; or failure to comply with a court order issued in the enforcement of a subpoena mandating the release of records to the Board.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Minor.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because it only affects individual licensees and registrants.

AND

The following studies/relevant data were relied upon in making the above determination: None.

Impact on Jobs/New Businesses:

The Committee has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because it only affects individual licensees and registrants.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with a disciplinary order. Costs only affect individuals who are applying for licensure or registration or licensees or registrants being disciplined. These costs may include fees for a physical or mental examination and attorney fees associated with license or registration denial or disciplinary action.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses because the regulations are applicable only to applicants and licensees or registrants who are disciplined by the Board.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either

be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. It may be obtained at the hearing or prior to the hearing upon request from the Board at 2005 Evergreen Street, Suite 1400, Sacramento, California 95815 or on the Board's website at: www.psychboard.ca.gov.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2005 Evergreen Street, Suite 1400, Sacramento, California 95815 or on the Board's website: www.psychboard.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Linda Kassis
Address: 2005 Evergreen Street, Suite
1400
Sacramento, CA 95815
Telephone No.: (916) 263-0712
Fax No.: (916) 263-2697
E-Mail Address: Linda.Kassis@dca.ca.gov

The backup contact person is:

Name: Jeffrey Thomas
Address: 2005 Evergreen Street, Suite
1400
Sacramento, CA 95815
Telephone No.: (916) 263-1617
Fax No.: (916) 263-2697
E-Mail Address: Jeffrey.Thomas@dca.ca.gov

Website Access: Materials regarding this proposal can be found at: www.psychboard.ca.gov.

TITLE 22. DEPARTMENT OF HEALTH CARE SERVICES

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations
SUBJECT: Medi-Cal Eligibility for IHSS
Recipients, DHCS-05-020

PUBLIC PROCEEDINGS

Notice is hereby given that the Department of Health Care Services (Department) will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Medi-Cal program currently provides a safety net of full-scope health care benefits to approximately 7.3 million low-income individuals residing in California. These individuals must meet certain restrictive resource and/or income criteria and primarily include pregnant women; children under 21; individuals receiving California Work Opportunity and Responsibility to Kids benefits and similarly situated families; and the aged, blind, and disabled population. The Medi-Cal program is free to most participants; however, some individuals who have monthly income in excess of certain amounts based upon family size must pay or obligate to pay certain amounts of health care expenses each month in which there are medical expenses before the Medi-Cal program will pay for the remainder of the medical expenses for that month. The Medi-Cal program is comprised of both federal and state funds, a funding ratio of approximately 50/50. The American Recovery and Reinvestment Act (ARRA), increased California's Federal Medical Assistance Percentage (FMAP) from 50 percent to 61.6 percent through December 31, 2010, but legislation in Congress could extend this higher level of funding through June 30, 2011.

42 Code of Federal Regulations (CFR), Section 431.10 requires that states designate a single state agency to administer their Medicaid program as a condition to receive federal funds under Title XIX of the Social Security Act. In California, the Department is designated as the single state agency for Medi-Cal; however, the counties determine the eligibility of the individual participants based on policies and procedures established by the Department.

The Department authorizes Medi-Cal county eligibility workers (EWs), within the county's Medi-Cal chain of command, who have received Title XIX Medi-Cal eligibility training, to process Medi-Cal applications and redeterminations using Medi-Cal rules. Only these trained Medi-Cal EWs are authorized to provide these Medi-Cal eligibility determinations. This workload is funded by 50 percent State General Funds and 50 percent federal Title XIX funds. Department of Social Services' social workers are funded by Title XX and are not among the agencies listed in federal regulations as permitted to conduct Medi-Cal eligibility determinations.

California Code of Regulations (CCR), Sections 50035.5, 50145, 50179.5, 50183, 50245, and 53845 currently include provisions that indicate that applications and eligibility for In-Home Supportive Services (IHSS) are also applications for the Medi-Cal program and/or that IHSS individuals receive automatic Medi-Cal and no application or separate Medi-Cal eligibility determination is required. In order to comply with federal regulations (42 CFR Section 431.10) and for the State to receive Federal Financial Participation for IHSS recipients' services and county administrative expenses associated with those services, Sections 50035.5, 50145, 50179.5, 50183, and 53845 are proposed to be amended and Section 50245 is proposed to be repealed to remove these provisions. County EWs within the Medi-Cal chain of command, who are trained in Title XIX Medi-Cal eligibility rules and processes and funded by Title XIX funds, must complete Medi-Cal determinations and redeterminations.

AUTHORITY

Section 20, Health and Safety Code; and Sections 10725, 14105 and 14124.5, Welfare and Institutions Code.

REFERENCE

Sections 11004, 12305, 12305.5, 14005, 14005.1, 14016, 14019, 14050.1, 14087.3 and 14087.4, Welfare and Institutions Code.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m., on May 20, 2011, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413; or
2. By fax transmission: (916) 440-5748; or
3. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS-05-020" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Tammy Kaylor of the Medi-Cal Eligibility Division, at (916) 327-0406.

All other inquiries concerning the action described in this notice may be directed to Lori Manieri of the Office of Regulations, at (916) 650-6825, or to the designated backup contact person, Lynette Cordell, at (916) 440-7695.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-05-020.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the

proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the Decisions Pending and Opportunity for Public Participation link (from the left menu), then selecting the Proposed Regulations link.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation that is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: The ongoing cost of \$9,902,000 in total funds involved with this regulation is included in the Medi-Cal County Administration base estimate.
- B. Fiscal Effect on State Government: The ongoing cost of \$4,951,000 in general funds associated with this regulation is included in the Medi-Cal County Administration base estimate.
- C. Fiscal Effect on Federal Funding of State Programs: The ongoing cost of \$4,951,000 in federal funds associated with this regulation is included in the Medi-Cal County Administration base estimate.

- D. All cost impacts known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None.

DETERMINATIONS

The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the proposed regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the proposed regulations would not affect small business. The proposed action simply brings the regulations into conformity with federal regulations regarding the use of a single state agency to administer the Medi-Cal Program and the process for Medi-Cal eligibility determinations and redeterminations. These proposed regulations do not impose any additional reporting, record-keeping, or other compliance requirements on small businesses.

The Department has determined that the proposed regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or

that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No public hearing has been scheduled; however, any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Susan Pierson, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413; voice (916) 440-7695; and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

TITLE 22. DEPARTMENT OF PUBLIC HEALTH

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations
SUBJECT: Ground Water Rule, DPH-09-007

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Public Health will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

All suppliers of domestic water to the public are subject to regulations adopted by the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f et seq.), as well as by the California Department of Public Health (Department) under the California Safe Drinking Water Act (Health & Safety Code, div. 104, pt. 12,

ch. 4, § 116270 et seq.). Pursuant to Health & Safety (H&S) Code sections 116350, 116375, 131052 and 131200, the Department has authority to adopt the subject regulations.

The Department is promulgating federally mandated regulations. The proposed regulations are identical to the federal regulations in all but a few respects. H&S Code section 116365.02 authorizes the Department to adopt federal regulations that have been promulgated pursuant to the federal Safe Drinking Water Act (SDWA) pursuant to Government Code section 11346.2(c). H&S Code section 11346.2 provides that departments promulgating regulations need not comply with 11346.2(b) for those regulations that are identical to the federal regulations, provided that certain information is included in the notice of proposed adoption. California has been granted "primacy" for the enforcement of the SDWA. To receive and maintain primacy, California must promulgate regulations that are no less stringent than the federal regulations.

The Department proposes to adopt the federal regulations which provide increased protection against microbial pathogens, specifically viral and bacterial pathogens, in public water systems (PWS) that use ground water sources.

The following federal regulations are being adopted:

1. 40 Code of Federal Regulations, parts 141.21(d)(3), 141.28(a), 141.153(h)(6), Appendix A to Subpart O (Consumer Confidence Reports), 141.202(a)(8), 141.203(a)(4), Appendices A and B to Subpart Q (Public Notification), and 141.400 through 141.405 (71 Fed. Reg. 65574 (November 8, 2006)), "Ground Water Rule".
2. 40 Code of Federal Regulations part 141.402(c)(2) (71 Fed. Reg. 67427 (November 21, 2006)), "Ground Water Rule, Correction".
3. 40 Code of Federal Regulations part 141.402(c)(2)(74 Fed. Reg. 30953 (June 29, 2009)), "National Primary Drinking Water Regulations: Minor Correction to Stage 2 Disinfectants and Disinfection Byproducts Rule and Changes in References to Analytical Methods".

An explanation of the federal regulations that are being adopted may be found in the federal registers identified above. In summary, the GWR establishes a risk-targeted approach to identify ground water systems susceptible to fecal contamination and requires corrective action to correct significant deficiencies and source water fecal contamination in all public ground water systems. The GWR applies to all PWS that use ground water, including consecutive systems. The GWR does not apply to PWS that combine all of their ground water

with surface water or with ground water under the direct influence of surface water prior to surface water treatment; California currently requires these PWS to filter and disinfect the combined sources under the existing state Surface Water Treatment Rule (Cal. Code Regs., tit. 22, div. 4, ch. 17, § 64650 et seq.).

Pursuant to federal primacy requirements and sections 116350, 116375, 131052, and 131200 of the H&S Code, the Department proposes the following changes to title 22, chapter 15, be adopted:

Article 3.5 (Ground Water Rule)

- In section 64430 (Requirements), sections 141.21(a), (b), and (c) from the existing federal Total Coliform Rule (TCR) are replaced by the corresponding sections 64422, 64423, 64424, and 64425 from the state TCR for clarity.

The net effect is that there are no significant differences between the proposed adoptions and the federal regulation.

Note: All Federal Register references may also be viewed, at no cost, through the following internet address: <http://www.gpoaccess.gov/fr/index.html>.

AUTHORITY

Sections 116350, 116375, 131052 and 131200, Health and Safety Code.

REFERENCE

Sections 116325 and 116350, Health and Safety Code.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations and Hearings by 5 p.m. on May 16, 2011, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By mail to: Office of Regulations and Hearings, California Department of Public Health, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377; or hand-delivered to: 1616 Capitol Avenue, Sacramento, CA 95814. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-5747; or

3. By email to regulations@cdph.ca.gov (it is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-09-007" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Michael McKibben of Drinking Water & Environmental Management, at (619) 525-4023.

All other inquiries concerning the action described in this notice may be directed to Linda M. Cortez, Office of Regulations and Hearings, at (916) 440-7683, or to the designated backup contact person, Marylyn Willis, at (916) 440-7807.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-09-007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations and Hearings, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rule-making file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations and Hearings.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Regulations, Proposed.

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you,

please call (916) 440-7683 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations and Hearings at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation that is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations and Hearings at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None.
- B. Fiscal Effect on State Government: None.
- C. Fiscal Effect on Federal Funding of State Programs: None.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: None.
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the proposed regulations would not affect small business, since Government Code Chapter 3.5, Article 2, section 11342.610 excludes drinking water utilities from the definition of small business.

The Department has determined that the regulations will have no impact on housing costs.

The proposed regulations require water systems to report results of their water quality tests to the California Department of Public Health. It is necessary for the health, safety, or welfare of the people of the state that the reporting requirement applies to businesses, to the extent applicable.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. For individuals with disabilities, should a public hearing be scheduled, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of written public hearing materials into Braille, large print, audiocassette, or computer disk. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

To request such services or copies of materials in an alternate format, please write to Linda M. Cortez, Office of Regulations and Hearings, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, or call (916) 440-7683, or use the California Relay Service by dialing 711.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or CEIR has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P.O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P.O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P.O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NO. 2080-2011-007-05

Project: Oak Country II Trails Project

Location: San Diego County, California

Applicant: County of San Diego, Department of
Parks and Recreation

Background

The County of San Diego through its Department of Parks and Recreation (Applicant) proposes to construct an approximately four-mile multi-use trail for hiking, biking, and equestrian users and an approximately one-acre trailhead staging area. The Oak Country II Trails Project (Project) is located within a 769-acre site in the unincorporated community of Ramona, San Diego County, California. The Project area is approximately 380 acres (comprising assessor's parcel numbers 276-111-05, 277-050-30, and 277-111-52) and is situated on the western half of the 769-acre site. The primary access to the Project is just east of the intersection of Highland Valley Road and Archie Moore Road. The Project area and larger site are part of the County-owned and managed Ramona Grasslands Preserve (approximately 4,500 acres). The Project includes a figure-eight loop trail with connections to potential future trail easements to the north and west. The trail will maximize use of an existing dirt service road that remains from prior ranching activity; however, two new loop trails will be constructed to the west of the existing dirt road. At the time of the processing of the biological opinion the majority of the work on the trails portion of the Project was completed.

The biological opinion for the Project only addresses the impacts from completing the one-acre trailhead

staging area. The balance of the construction activities include: (1) installation of two single picnic table shade covers over eight days, requiring a backhoe to excavate four thirty-inch diameter holes for concrete footing installation; (2) installation of two vehicle gates and one trail gate over three days, requiring a "Bobcat" with an auger attachment to drill four to six post holes for post footings; (3) installation of a wood kiosk over 2 days, requiring a "Bobcat" with an auger attachment to drill two post holes for post footings; and (4) placement of decomposed granite over five days on the driving and parking surfaces, which will be spread with a small tractor and compacted with a mechanical roller.

At the onset of the Project an interagency informal consultation (FWS-SDG-08B0770-10I0944) under section 7 of the Endangered Species Act was initiated to address potential impacts to Stephens' kangaroo rat (*Dipodomys stephensi*) within the Project footprint. During that process the U.S. Fish and Wildlife Service (Service) requested that the Applicant conduct protocol-level surveys for the Stephens' kangaroo rat to determine the presence/absence of the species and to assess whether the recreational trails and associated trailhead staging area would impact habitat for the Stephens' kangaroo rat. The survey was initiated in May 2010, and included live-trapping conducted over five trap nights, including the placement of trap lines within the proposed trailhead staging area. A total of eight Stephens' kangaroo rats were captured and numerous potential burrows were observed within the vicinity of the Project area. However, no Stephens' kangaroo rat or occupied burrows were observed within the footprint of the new loop trail that had been cleared during December 2009, and January 2010, and no Stephens' kangaroo rats and occupied burrows were observed within the footprint of the portions of the Project requiring additional construction activities (i.e., trailhead staging area). Lack of Stephens' kangaroo rat or signs of occupancy occurring within the trailhead staging area was attributed to the density of existing vegetation and minimal surface disturbance. The nearest Stephens' kangaroo rat that was trapped at that time occurred along the existing ranch service road (approximately 360 feet due north of the trailhead staging area). The informal consultation directed that the Applicant implement conservation measures during construction (e.g., biological monitor present during initial ground-disturbing activities and halting work should the animal be found within Project site) to avoid impacts to Stephens' kangaroo rat. The construction on the trailhead staging area proceeded upon the completion of the informal consultation.

The Service received a notification on November 23, 2010, from the Applicant that a single juvenile Stephens' kangaroo rat was found within a covered fence post hole at the trailhead stage area and that a stop work

order was issued for the Project upon that discovery. The biological monitoring log that accompanied the Applicant's notification documented that the biological monitor had observed one potential Stephens' kangaroo rat burrow along the western perimeter the trailhead staging area. Thereafter, the Applicant requested a site visit with the U.S. Army Corps of Engineers (USACE), Service, and Department of Fish and Game (DFG). The Service and DFG inspected the trailhead staging area on December 13, 2010, and confirmed the location of the potential Stephens' kangaroo rat burrow. Based on existing site conditions (i.e., three potential Stephens' kangaroo rat burrows and confirmation of one juvenile Stephens' kangaroo rat), combined with known occurrences of Stephens' kangaroo rat within the nearby areas, it was determined that further construction activities within the trailhead staging area had the potential to result in additional "take" of Stephens' kangaroo rat. The Service determined that formal consultation to address impacts to Stephens' kangaroo rat would be prudent prior to completing the trailhead staging area construction.

The Project activities described above are expected to incidentally take¹ Stephens' kangaroo rat where those activities take place within the trailhead staging area. The existing vegetation is comprised of non-native grassland and ruderal conditions, which have further been disturbed by surface-grubbing activities at the onset of the construction of the trailhead staging area. In particular, Stephens' kangaroo rat could be incidentally taken as a result of either being trapped within their burrows or having their burrows crushed or abandoned during the subsequent surface preparation and installation of the decomposed granite on the driving and parking surfaces (occurring over the approximately one-acre area). Stephens' kangaroo rat may also be forced to disperse from the impact area, thereby resulting in the loss of a portion of their feeding, breeding, and/or shelter habitat. Stephens' kangaroo rat is designated as an endangered species under the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(6)(C).)

Stephens' kangaroo rat individuals are documented as present at the Project site and occupied Stephens' kangaroo rat habitat occurs within and adjacent to the Project site. Burrows were not previously observed within the portions of the Project footprint associated with the new loop trail or trailhead staging area. However, due to the subsequent disturbance and vegetation

¹ Pursuant to Fish and Game Code section 86, "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

removal that occurred during the construction of the trailhead staging area, conditions were created (i.e., burrowing and foraging opportunities) that are presently conducive for supporting Stephens' kangaroo rat. Absent the aforementioned conditions the area would not have been suitable in supporting Stephens' kangaroo rat. Because of the documented presence of Stephens' kangaroo rat, dispersal patterns of Stephens' kangaroo rat, and the presence of suitable Stephens' kangaroo rat habitat that was created at the Project site, the Service determined that Stephens' kangaroo rat is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of Stephens' kangaroo rat.

According to the Service, the Project will result in the permanent loss of one acre of Stephens' kangaroo rat occupied habitat. The loss of one acre of habitat represents a minor percentage (0.02) of Stephens' kangaroo rat-occupied habitat within the greater Ramona Grassland Preserve. Based on the prior surveys and limited extent of occupied Stephens' kangaroo rat habitat it is estimated that direct injury or mortality will amount to no more than one individual Stephens' kangaroo rat. In conjunction with the translocation activities, it is anticipated that direct mortality as a result of Stephens' kangaroo rats being held, transported, and released will be low given that it has been documented that the species is fairly resilient to stress caused by captivity. The Service estimates that one Stephens' kangaroo rat will suffer injury or mortality related to the capture, handling, and captivity during remaining Project activities.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, the USACOE consulted with the Service as required by the ESA. On February 24, 2011, the Service issued a biological opinion (Service file No. FWS-SDG-08B0770-11F0268) (BO) to the USACOE. The BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures.

The Applicant plans to implement and adhere to measures contained within a Resource Management Plan (RMP) for the greater Ramona Grasslands Preserve that will be part of the forthcoming County of San Diego's North County Multiple Species Conservation Program. However, until the RMP is in place the BO specifies that the Applicant will maintain and manage an approximately three-acre area of suitable grassland habitat adjacent to the Project to benefit the Stephens' kangaroo rat. Following implementation of the RMP, maintenance of the area may continue by being mowed per the standards provided in the BO, by grazing should a plan

be developed for the grasslands preserve, or by other methods with written concurrence from the Service and DFG.

On February 28, 2011, the Director of the Department of Fish and Game (DFG) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO and its related ITS are consistent with CESA for purposes of the Project and Stephens' kangaroo rat.

Determination

DFG has determined that the BO, including the ITS, is consistent with CESA as to the Project and Stephens' kangaroo rat because the mitigation measures contained in the BO and ITS meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, DFG finds that: (1) take of Stephens' kangaroo rat will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO and ITS will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance, minimization and mitigation measures and to monitor compliance with, and effectiveness of, those measures; and (4) the Project will not jeopardize the continued existence of Stephens' kangaroo rat. The mitigation measures in the BO and ITS include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- The Applicant will maintain and manage an approximately three-acre area of grassland habitat adjacent to the proposed Project to benefit the Stephens' kangaroo rat until the RMP is in place.
- The grassland habitat that will be maintained and managed is currently protected via an existing grant deed (to the County of San Diego) that includes encumbrances upon the grantee to protect the conservation values of the property, in conformance with the goals and guidelines of the County of San Diego's Multiple Species Conservation Program.
- The Applicant is not authorized to proceed with the staging area construction (with exception to decomposed granite placement) until it has received approval from the Service and DFG on selection and site preparation for the three-acre grassland habitat area that will serve as the Stephens' kangaroo rat receiver site (including successful establishment of Stephens' kangaroo rat to receiver site/artificial burrows).

- To ensure that the three-acre area remains suitable for use by Stephens' kangaroo rat, maintenance will be performed by the Applicant to ensure that thick and/or structured vegetative cover (*i.e.*, *Bromus* sp., *Avena* sp., mustard, fennel, shrubs) does not exceed thirty-percent cover. All measures below will remain in effect until the RMP for the greater Ramona Grasslands Preserve is implemented by the Applicant. Specific measures will include the following:
 - 1) Initial mowing of the three-acre area will occur this year prior to the existing vegetation setting seed.
 - 2) All mowing will be done using a flail mower.
 - 3) All cut vegetation will be removed upon the completion of mowing.
 - 4) The area will be qualitatively assessed for vegetative cover twice per year, once in late winter/early spring and once in late spring/early summer. At no time will the thick and/or structured vegetative cover (*i.e.*, *Bromus* sp., *Avena* sp., mustard, fennel, shrubs) exceed the thirty-percent cover limit.
- To render the balance of the one-acre staging area unsuitable for Stephens' kangaroo rat for the remainder of Project construction, the Applicant will first import and place decomposed granite (four- to six-inch thick layer) on the driving and parking surfaces. The Applicant will immediately notify the Service and DFG upon the completion of this work activity.
- Relocation of Stephens' kangaroo rat will include the following measures:
 - 1) Prior to importing and placing the decomposed granite on driving and parking areas, a qualified Stephens' kangaroo rat biologist will complete three nights of exclusion trapping at least 24 hours, and no more than 72 hours, in advance of the ground-disturbing activity. All burrows will be checked in the morning following trapping to determine if there was Stephens' kangaroo rat activity at the burrow during the trapping session. Following the final night of trapping, the number of burrows showing Stephens' kangaroo rat activity will be quantified and reported to the Service and DFG.
 - 2) Trapped Stephens' kangaroo rat are not to be held for a period longer than 72 hours, until surface treatment of the one-acre trailhead staging area is completed. Animals will be kept in solitary enclosures while in captivity to reduce the potential for injury or disease transmission and will be released into the newly mowed habitat directly adjacent to the Project site. The release will be into artificial burrows.
 - 3) Prior to importing and placing decomposed granite on driving and parking areas, the qualified Stephens' kangaroo rat biologist will determine the status of burrows within the one-acre trailhead staging area and, if it is practicable to avoid, will flag any potential Stephens' kangaroo rat burrows and create a ten to fifteen-foot buffer around the burrow to encompass the entire underground portion of the burrow complex. The qualified Stephens' kangaroo rat biologist will be on-site daily while construction and/or surface disturbing activities are taking place to minimize take of Stephens' kangaroo rat, and to ensure compliance with all avoidance and minimization measures identified within the BO.
- The Applicant will train construction crews on Stephens' kangaroo rat issues and protocols for addressing Stephens' kangaroo rat that are found within the Project site and during construction of the staging area.
- All piles of loose dirt will be covered with tarps prior to the end of each work day to assure that Stephens' kangaroo rat do not burrow into the loose dirt, thus minimizing the potential for take of additional Stephens' kangaroo rat.
- Construction will be avoided during rainy periods when burrows may be more susceptible to collapse and impact from vehicular and foot traffic.
- Ground-disturbing activities (*e.g.*, digging, driving with heavy vehicles) will be kept to as minimal a footprint as possible, and all construction activities, including staging or lay down areas and vehicle ingress and egress routes, will remain on the decomposed granite areas to the greatest extent practical.
- The Applicant will limit site disturbance for construction and access, and implement specific measures to prevent removal of habitat beyond authorized limits.
- All footings and post holes will either be dug and backfilled each day or open footings and post holes will be covered each evening at the completion of work.
- All construction activities will occur during daytime hours only.
- No artificial lighting sources will be used in association with the trails or staging area.

Monitoring and Reporting Measures

- The Applicant will submit an annual report to the Service and the DFG documenting all maintenance activities that were completed.
- A supplemental monitoring report will be prepared and submitted to the Service and DFG by the qualified Stephens' kangaroo rat biologist documenting the design specifications for the artificial burrows, specific placement within the three-acre grassland habitat area, corresponding maps and photo documentation, and documenting utilization of the artificial burrows on the receiver site. Monitoring reports will be provided no later than forty-five days after the completion of Stephens' kangaroo rat translocation activities.
- The Applicant will ensure that construction monitoring reports are submitted to the Service and DFG no later than forty-five days upon the completion of construction activities associated with the trailhead staging area. The reports will include maps and photo documentation of all habitat conditions pre- and post-construction.
- Authorization from DFG for the Stephens' kangaroo rat biologist conducting exclusion trapping and handling of Stephens' kangaroo rat will require processing/approval of the appropriate letter permit or memorandums of understanding between DFG and Applicant.
- The qualified Stephens' kangaroo rat biologist will immediately report any incidental take of Stephens' kangaroo rat to the Service and DFG, including but not limited to any actual or anticipated failure to implement avoidance and minimization measures within the timeline specified under the BO.

Financial Assurances

- The Applicant will provide \$40,000 for the initial year to maintain and manage the three-acre area of grassland habitat to benefit the Stephens' kangaroo rat. On an annual basis the Applicant will provide DFG with a written assessment and a projected amount of funds for that particular year of maintenance and management activities. The said funds are an obligation to DFG and will remain in effect until such time that the area is included as part of the Ramona Grassland Preserve. Allocation of supplemental funds will be based on the prescribed stewardship activities and operation and maintenance responsibilities specified within the RMP for the Ramona Grasslands Preserve.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Proj-

ect for incidental take of Stephens' kangaroo rat, provided the Applicant implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO and ITS. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO and ITS, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from DFG. (See generally Fish & G. Code, §§ 2080.1, 2081, subs. (b) and (c)).

**DEPARTMENT OF TOXIC SUBSTANCES
CONTROL**

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

**Final Decision to Recertify
Hazardous Waste Environmental Technology**

The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) has reached a final decision to recertify the following hazardous waste environmental technology:

The SCIGEN NEUTRALEX technology for treating aqueous formaldehyde in ten percent neutral buffered Formalin waste resulting from histopathology tissue specimen preservation and automated processor activities.

Applicant: SCIGEN, Inc.
333 East Gardena Blvd.
Gardena, California 90249

Section 25200.1.5., Health and Safety Code, authorizes DTSC to certify the performance of hazardous waste environmental technologies. DTSC certifies only technologies which are determined to not pose a significant potential hazard to the public health and safety or to the environment when used under specified operating conditions.

Due to the current budget shortfall for the State of California, and associated budget uncertainty, DTSC is not accepting any new applications into its hazardous waste technology certification program. DTSC considers recertification requests for technologies already certified which have not changed their design, formulation, or operation.

The certification program provides an independent technical evaluation of technologies to identify those

meeting applicable quality standards, so as to facilitate regulatory and end-user acceptance and to promote and foster growth of California's environmental technology industry.

DTSC makes no express or implied warranties as to the performance of the manufacturer's product or equipment. The end-user is solely responsible for complying with the applicable federal, state, and local regulatory requirements. Certification does not limit DTSC's authority to require additional measures for protection of public health and the environment.

By accepting certification, the manufacturer assumes, for the duration of certification, responsibility for maintaining the quality of the manufactured equipment and materials and their operation at a level equal to or better than was provided to obtain certification and agrees to be subject to quality monitoring by DTSC as required by the statute under which certification is granted.

DTSC's final decision to re-certify the Scigen Neutralex technology is based on a proposed decision which was subject to a public review and comment period. During the comment period no comments were received.

DTSC has concluded that the Scigen Neutralex technology does not pose a significant potential threat to public health or the environment when used according to the manufacturer's instructions and the conditions in the certification.

Requests for additional information concerning this final decision should be submitted to the following address:

California Environmental Protection Agency
Department of Toxic Substances Control
Office of Pollution Prevention and Green
Technology
P.O. Box 806
1001 I Street, 12th Floor
Sacramento, California 95812-0806
Attn: Dick Jones (916) 322-3292

BACKGROUND

The Scigen Neutralex technology was originally certified effective June 29, 1997, for a three-year term. The final decision to certify was published in the May 30, 1997, California Regulatory Notice Register, Volume 97, Number 22-Z. The original certification included a description of the technology, the certification statement and associated conditions and limitations, and the technical basis for the original certification decision. These documents are at:

<http://dtsc-cm/TechnologyDevelopment/TechCert/scigen-batch-treat-formaldehyde-techcert.cfm> or may be obtained from DTSC.

Following re-evaluations and proposed decisions with 30-day public comment periods, DTSC published final decisions to recertify the Neutralex technology for three-year terms effective June 10, 2001 and, after a one-year extension, March 25, 2005. The technology was recertified again on May 16, 2008. Reports describing the basis for these recertification decisions are available from DTSC.

DTSC recently re-evaluated the Neutralex technology, and proposed to recertify the technology for an additional three-year term. The proposed decision was published in the California Regulatory Notice Register, February 18, 2011, Register 2011, Volume Number 7-Z. DTSC has reached a final decision to re-certify the Neutralex technology for an additional three-year term.

EFFECT ON CURRENT CERTIFICATION STATUS

Pursuant to Title 22, California Code of Regulations, section 68100, the existing certification remained valid during the re-certification.

The certification will remain in effect for an additional three-year period from the effective date of this final certification decision.

BASIS FOR RECERTIFICATION

Previous recertification evaluations included laboratory testing of the effectiveness of Neutralex for treating ten percent neutral buffered formalin wastes, and discussions with end users. According to Scigen, the Neutralex technology has not changed since it was originally certified. For the current recertification evaluation, DTSC staff contacted three more end users of the Neutralex technology to confirm previous information on its performance under the conditions of use at health care facilities. All were satisfied with the product. Most found the directions clear and followed them. None of the users contacted had any problems with the technology. A regional health and safety manager representing approximately thirty regional hospitals again reported no problems. They use the technology to treat 40,000 gallons of formalin waste per year.

In earlier certification reviews, DTSC did extensive investigations and lab tests of the Neutralex product. The results were consistently positive. Later reviews used customer interviews and again produced positive results. DTSC has not received nor is aware of any complaints or reports of problems with the Neutralex technology.

REGULATORY CONSIDERATIONS

Title 22, California Code of Regulations, Section 67450.20, specifies that treatment of formaldehyde by health-care facilities using any technology certified as effective for that purpose is authorized for operation under a grant of conditional exemption. The treatment must be operated pursuant to the conditions imposed on the certification. In addition, the generator conducting the treatment must comply with the conditions of the Conditional Exemption in Section 25201.5 of the Health and Safety Code. The reader should refer to these statutory and regulatory sections for additional information.

CERTIFICATION CONDITIONS

The conditions of the original certification, published in the May 30, 1997, California Regulatory Notice Register, Volume 97, Number 22–Z remain in effect.

CERTIFICATION REFERENCE

As a holder of a valid hazardous waste environmental technology certification, Scigen is authorized to use the certification seal (California Registered Service Mark Number 046720) during the term of the certification. Scigen shall cite the certification number and date of issuance in conjunction with the certification seal whenever it is used.

When providing information on the certification to an interested party, Scigen shall, at a minimum, provide the full text of the original and recertification decisions as published in the California Regulatory Notice Register.

DURATION OF THE CERTIFICATION

This recertification is effective thirty days from the publication date of this final notice, and will remain in effect until May 1, 2014 (a period of three years from its effective date), unless it is amended or revoked for cause.

SUSPENSION OF ACTION REGARDING UNDERGROUND REGULATIONS

OFFICE OF ADMINISTRATIVE LAW

SUSPENSION OF ACTION REGARDING UNDERGROUND REGULATIONS

**(Pursuant to Title 1, section 280, of the
California Code of Regulations)**

On November 23, 2010, the Office of Administrative Law (OAL) received a petition challenging one of the Frequently Asked Questions (FAQs) (Staff Services Analyst (General)) on the State Personnel Board (SPB)'s website concerning the interpretation of "state service" as used in Pattern II of the minimum qualifications for the position. The FAQs stated that "state service" does not include time served in a temporary, seasonal, and/or student assistant position.

On March 14, 2011, SPB certified to the OAL that it will not issue, use, enforce, or attempt to enforce the alleged underground regulation; therefore, pursuant to Title 1, section 280 of the California Code of Regulations, OAL must suspend all action on this petition.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653–7715. Please have the agency name and the date filed (see below) when making a request.

File# 2011–0203–01

ATHLETIC COMMISSION

Application, Postponement, Notice of Change, etc.

The Section 100 action makes various nonsubstantive amendments to twenty–three sections in Title 4 of the California Code of Regulations.

Title 4

California Code of Regulations

AMEND: 202, 210, 214, 246, 247, 248, 249, 252, 254, 264, 266, 267, 304, 332, 334, 335, 364, 385, 510, 533, 541, 545, 609

Filed 03/17/2011

Agency Contact: Dale Chessey (916) 263-2195

File#2011-0225-01

BOARD OF GUIDE DOGS FOR THE BLIND

Competencies for Instructor/Apprentice/Guide Dog

The Board of Guide Dogs for the Blind (BGDB) amends four sections within Title 16 of the California Code of Rulemaking in this rulemaking action. The amendments clarify what experience qualifies an applicant to sit for the licensing examination to become an instructor. The requirement that an applicant have one year of experience working in a kennel is being removed to enable more people to enter the field and also to reflect the focus on the client and not the dog. This rulemaking also establishes that "full time" means an average of 32 hours a week and additionally creates four additional competencies for guide dogs. This rulemaking also removes the requirement for 90 days of training for a guide dog six months prior to assignment and instead requires the dog to be tested for competencies within 60 days of assignment.

Title 16

California Code of Regulations

AMEND: 2260, 2266, 2282, 2282.1

Filed 03/17/2011

Effective 04/16/2011

Agency Contact:

Antonette Sorrick (916) 574-7825

File# 2011-0203-03

BOARD OF PILOT COMMISSIONERS

Investigator Minimum Standards

The Board of Pilot Commissioners adopted section 211.5 of title 7 of the California Code of Regulations, which establishes and defines the minimum qualifications required of an applicant for Commission Investigator. These minimum standards ensure that applicants are familiar with maritime issues required as defined in section 1156 of the Harbors and Navigation Code and possess sufficient training and work experience in marine investigations.

Title 7

California Code of Regulations

ADOPT: 211.5

Filed 03/17/2011

Effective 04/16/2011

Agency Contact: Terri Toohey (916) 768-5638

File# 2011-0203-05

CALIFORNIA FILM COMMISSION

Film and Television Tax Credit Program

This regulatory action amends the regulations and forms used for administering the California Film and Television Tax Credit program to facilitate and clarify the process for acquiring the tax credit.

Title 10

California Code of Regulations

AMEND: 5500, 5501, 5505, 5506, 5507

Filed 03/16/2011

Effective 04/15/2011

Agency Contact: Terri Toohey (916) 768-5638

File# 2011-0302-03

DEPARTMENT OF FOOD AND AGRICULTURE

Light Brown Apple Moth Interior Quarantine

This certificate of compliance makes permanent the prior emergency regulatory action (OAL file no. 2010-1220-02E) concerning the contiguous quarantine area in Monterey, Napa, Solano, and Sonoma counties and expanding this contiguous quarantine area by approximately 175 square miles. A new quarantine area was also established in the Lindsey Slough Area of Solano County of approximately 15 miles. Additionally, the quarantine areas in the Tracy area of Alameda and San Joaquin counties were expanded by approximately four square miles, the Davis area of Solano and Yolo counties by approximately two square miles; the Ryer Island area of Sacramento and Solano counties by approximately two miles; and the Sacramento area of Sacramento and Solano counties by approximately 11 square miles. The prior action was due to recent findings of the light brown apple moth "LBAM" ("Epiphyas postvittana") and resulted in a total of approximately 5,358 square miles under regulation within the State for the pest. The effect of this certificate of compliance makes these amendments to the regulation permanent and establishes the authority for the State to perform quarantine activities against the LBAM in these additional quarantine areas.

Title 3

California Code of Regulations

AMEND: 3434(b) and (c)

Filed 03/18/2011

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2011-0303-04

DEPARTMENT OF FOOD AND AGRICULTURE

Light Brown Apple Moth Interior Quarantine

This regulatory action will remove approximately 13 square miles surrounding the Arroyo Grande area of San Luis Obispo County from section 3434(b) that is

currently designated a quarantine area for the light brown apple moth “LBAM” (“*Epiphyas postvittana*”). The effect of the proposed change is to remove authority for the state to perform quarantine activities against the LBAM in this area. This will result in a total of approximately 5,345 square miles under regulation within the state for the pest.

Title 3

California Code of Regulations

AMEND: 3434(b)

Filed 03/18/2011

Effective 04/17/2011

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2011-0222-03

DEPARTMENT OF INSURANCE**Provide a Definition for the Portfolio of Forms**

This change without regulatory effect adds a definition for the term “Portfolio of Endorsements and Forms” to the Definitions section of the California Automobile Assigned Risk Plan (CAARP), and it is found in the Introduction to the Plan of Operations for the CAARP. The portfolio is the manual of endorsements and forms available to certified producers from the Automobile Insurance Plan Service Office and is used by certified producers in the course of business to determine the appropriate coverage for applicants. The lack of a definition of this term resulted in confusion and delay in the approval and implementation of endorsements impacting coverage.

Title 10

California Code of Regulations

AMEND: 2498.4.9

Filed 03/22/2011

Agency Contact: Mike Riordan (415) 538-4226

File# 2011-0203-06

DEPARTMENT OF INSURANCE**Principally At-Fault Regulation**

This action updates the procedure and standards an insurance company must use in determining whether a driver was principally at fault for an automobile accident and adopts a new regulation to clarify the criteria and points system used in determining eligibility for a Good Driver Discount.

Title 10

California Code of Regulations

ADOPT: 2632.13.1 AMEND: 2632.13

Filed 03/16/2011

Effective 12/11/2011

Agency Contact:

Lisbeth Landsman-Smith (916) 492-3561

File# 2011-0203-02

DEPARTMENT OF JUSTICE**Schedule of Investigation and Processing Costs**

The Department of Justice, Division of Law Enforcement, Bureau of Gambling Control (Bureau) submitted this rulemaking action to amend title 11, California Code of Regulations, section 2037. The amendment will increase the deposit amounts that specified persons are required to pay for investigations conducted by the Bureau related to applications for state gambling licenses, review of games, and review of contracts for third party providers of proposition player services. Certain license applicants, as specified, will only be required to submit deposits if requested by the Bureau when an investigation is deemed necessary.

Title 11

California Code of Regulations

AMEND: 2037

Filed 03/16/2011

Effective 04/15/2011

Agency Contact: Erica Goerzen (916) 322-0908

File# 2011-0218-01

DEPARTMENT OF TOXIC SUBSTANCES**CONTROL****Conflict-of-Interest Code**

The Department of Toxic Substances Control is amending its conflict-of-interest code found at title 22, sections 66250, 66250.1, and 66250.2, California Code of Regulations. The amendments were approved by the Fair Political Practices Commission for filing on January 25, 2011.

Title 22

California Code of Regulations

AMEND: 66250, 66250.1, 66250.2

Filed 03/22/2011

Effective 04/21/2011

Agency Contact: Tiffany King (916) 324-0339

File# 2011-0214-02

OCCUPATIONAL SAFETY AND HEALTH**STANDARDS BOARD****Dangerous Accumulation of Gases**

This change without regulatory effect amends four sections in Title 8 of the California Code of regulations. The amendments are being made to change the text to be gender neutral instead of gender specific.

Title 8

California Code of Regulations

AMEND: 7102, 7104, 7160, 7178

Filed 03/17/2011

Agency Contact: Marley Hart (916) 274-5721

File# 2011-0207-01

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Definitions

The Occupational Safety and Health Standards Board (OSHSB) submitted this action without regulatory effect to remove all cross-references to title 24 building standards that remain in many of the definitions in title 8, California Code of Regulations, section 3207, and to remove Health and Safety Code section 18943(b) as a reference citation.

Title 8

California Code of Regulations

AMEND: 3207

Filed 03/17/2011

Agency Contact: Marley Hart (916) 274-5721

File# 2011-0216-06

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT

Proposition 65 Amendment

This rulemaking action amends existing procedures in section 25803 of Title 27 of the California Code of Regulations to clarify the original intent of the regulation and allow for the most current and appropriate methodology to be applied to quantitative risk assessment. This rulemaking also amends section 25803 to provide default age-specific bodyweights to be used in calculation of the maximum allowable dose level.

Title 27

California Code of Regulations

AMEND: 25801, 25803

Filed 03/17/2011

Effective 04/16/2011

Agency Contact: Monet Vela (916) 323-2517

File# 2011-0210-01

STATE WATER RESOURCES CONTROL BOARD

Non-Regulatory Amendment to San Joaquin-Sacramento River Basins

This filing is a Basin Plan Amendment submitted to OAL by the State Water Resources Control Board and subject to OAL review under Government Code section 11353.

On August 13, 2009, the Central Valley Regional Water Quality Control Board adopted Resolution No. R5-2009-0069, amending the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins. This resolution was approved by the State Water Resources Control Board on December 14, 2010, under State Board Resolution No. 2010-0063.

This amendment corrects an error in the beneficial uses of Marsh Creek and the Marsh Creek Reservoir

that was introduced during the drafting of the third edition of the Basin Plan, and an error in the water quality objectives for boron that was introduced during the drafting of the fourth edition of the Basin Plan. The amendment also integrates the following into the Basin Plan: the State Water Board's Water Quality Enforcement Policy, the Nonpoint Source Implementation and Enforcement Policy, and the Compliance Schedule Policy. Finally, the amendment updates the references in the Basin Plan to the State Water Board's Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, revises the waiver portion of the Basin Plan to be consistent with the current Water Code, and makes other non-substantive editorial and grammatical updates.

Title 23

California Code of Regulations

ADOPT: 3949.7

Filed 03/17/2011

Effective 03/17/2011

Agency Contact: Peter Martin (916) 341-5557

File# 2011-0204-07

SUPERINTENDENT OF PUBLIC INSTRUCTION

Work Experience Education

This rulemaking action establishes standards for the Work Experience Education (WEE) program in the California Code of Regulations. These include the content of a local education agency's WEE plan regarding student objectives, units of instruction, reasonable probability of continued employment during the program, assurance of the availability of the necessary tools and materials, protection of student health and safety, adequate supervision, workers' compensation coverage if the student is employed, maintenance of hourly work records, cooperation in rating student achievement, non-discrimination, criteria for granting school credit, and the type of credential required for WEE teacher-coordinators. The rulemaking also incorporates by reference two forms used in administration of the WEE program.

Title 5

California Code of Regulations

ADOPT: 10120 AMEND: 10070, 10071, 10075

Filed 03/21/2011

Effective 04/20/2011

Agency Contact: Debra Thacker (916) 319-0860

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN October 20, 2010 TO
March 23, 2011**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations

titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

03/09/11 ADOPT: 552
 03/08/11 ADOPT: 18451 REPEAL: 18451, 18452, 18453
 03/07/11 AMEND: 18404.1
 03/07/11 AMEND: 18435, 18450.4
 03/03/11 AMEND: 1897
 02/23/11 AMEND: 18734, 18751
 02/17/11 AMEND: 18116
 02/17/11 AMEND: 18239
 02/17/11 ADOPT: 18401.1, 18435.5
 02/15/11 AMEND: 599.500, 599.501
 01/28/11 ADOPT: 559
 01/26/11 ADOPT: Headings for Subchapter 1.3, Article 1, Article 2, Article 3, Article 4
 AMEND: Heading for Subchapter 1.3 — Article 25
 01/25/11 AMEND: 1859.2, 1859.71.6, 1859.77.4, 1859.81.1, 1859.104
 01/13/11 AMEND: 1859.2, 1859.302, 1866, Form SAB 50-02, 50-03, 50-04, 50-06, 50-07, 50-08, 50-09, 50-10, 61-04, 40-20, 40-21, 40-24
 01/12/11 ADOPT: 172.9, 172.10 AMEND: 172.6, 172.7, 172.8, 172.10 (renumbered to 172.11), 172.11 (renumbered to 172.12)
 REPEAL: 172.9
 01/12/11 AMEND: 59.3 Appendix A
 01/06/11 ADOPT: 649.17.1, 649.19, 649.20
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 12/20/10 ADOPT: 18215.2 AMEND: 18215, 18225, 18450.1, 18450.4, 18450.5

12/16/10 ADOPT: 1859.90.1 AMEND: renumber 1859.90.1 as 1859.90.2 (not shown), 1859.129, 1859.197
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 11/22/10 AMEND: 1859.2, 1859.83
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 10/29/10 ADOPT: 1859.90.2 AMEND: Renumber 1859.90.2 to 1859.90.3, 1859.129, 1859.197
 10/28/10 AMEND: 59.1
 10/27/10 ADOPT: 1185.21, 1189 AMEND: 1181, 1181.1, 1181.2, 1181.4, 1183, 1183.01, 1183.02, 1183.03, 1183.06, 1183.07, 1183.08, 1183.081, 1183.09, 1183.11, 1183.12, 1183.131, 1183.14, 1183.2, 1183.21, 1183.30, 1183.31, 1183.32, 1185, 1185.2, 1185.3, 1185.4, 1185.5, 1185.6, 1186, 1187, 1187.2, 1187.3, 1187.9, 1188, 1188.1, 1188.2, 1188.3, 1188.31, 1189.1, 1189.3 REPEAL: 1181.3, 1189.4, 1189.5
 10/26/10 ADOPT: 2297.1
 10/21/10 ADOPT: 58.8 AMEND: 59.3

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 02/15/11 ADOPT: 820.55 AMEND: 820, 820.3, 820.6, 820.7
 02/10/11 AMEND: 3601
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 12/20/10 ADOPT: 6446, 6446.1 AMEND: 6400, 6452.4, 6624
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12/06/10	AMEND: 3906	5510, 5520, 5530, 5531, 5532, 5533,
11/30/10	AMEND: 3406	5534, 5540, 5550, 5560, 5570, 5571,
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11/18/10	AMEND: 105, 108	11/29/10 AMEND: 1374.2
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03/17/11 ADOPT: 3949.7
 01/19/11 ADOPT: 3775.5, 3776, 3779.5 AMEND: 3720, 3721, 3722, 3723, 3730, 3733, 3740, 3741, 3742, 3750, 3751, 3762, 3763, 3775, 3777, 3778, 3779, 3780, 3781 (Appendices A and C) REPEAL: 3760, 3761, 3764, 3776, 3782
 01/18/11 ADOPT: 5000
 01/03/11 ADOPT: 3919.9
 12/23/10 ADOPT: 3939.37
 12/20/10 ADOPT: 907, 910, 915, 920, 921, 925, 929, 930

12/17/10 ADOPT: 596, 596.1, 596.2, 596.3, 596.4,
596.5
12/15/10 AMEND: 3943
12/07/10 ADOPT: 3909 AMEND: 3900
11/18/10 AMEND: 2200, 2200.3, 2200.4, 2200.6
11/17/10 AMEND: 1062, 1064, 1066, 3833.1
11/04/10 ADOPT: 3929.5

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03/07/11 AMEND: 5002, 5010, 5040
02/18/11 ADOPT: 1013, 1052, 1119, 1757, 1759,
2013, 2052, 2119, 2757, 2759 AMEND:
1002, 1008, 1018, 1104, 1118, 1180,
1211, 1333, 1334, 1334.2, 1336.1, 1346,
1377, 1426, 1429, 1432, 1446, 1450,
1458, 1464, 1468, 1474, 1498, 1500,
1502, 1504, 1506, 1612, 1618, 1750,
1752, 1754, 1756, 1758, 2002, 2008,
2018, 2104, 2118, 2211, 2230, 2334,
2346, 2426, 2429, 2432, 2468, 2474,
2498, 2500, 2502, 2504, 2506, 2612,

2750, 2752, 2754, 2756, 2758 REPEAL:
1613, 1615, 1616, 2613, 2615, 2616

02/10/11 ADOPT: 4313 AMEND: 4300, 4302,
4304, 4306, 4308, 4310, 4312, 4314,
4316, 4318, 4320, 4322, 4324

01/28/11 AMEND: 3070, 4204, 4210, 4212

01/26/11 ADOPT: 7980, 7980.1, 7980.2, 7980.3

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03/17/11 AMEND: 25801, 25803

02/16/11 AMEND: 27001

01/26/11 AMEND: 25705

01/26/11 AMEND: 25705

12/16/10 AMEND: 25805

11/18/10 AMEND: 25805

Title MPP

02/15/11 AMEND: 16-015, 16-120, 16-601
REPEAL: 16-315

01/31/11 AMEND: 31-021

12/22/10 AMEND: 42-302, 42-712, 42-713